(1880) 42 N. J. L. 189 (unintentional nuisance). In civil actions arising out of a breach of statute the test of reasonable anticipation has no place. *Smith* v. *Milwaukee etc.* (1895) 91 Wis. 360 (building requirements); *Salisbury* v. *Herchenroder* (1871) 106 Mass. 458 (hanging of signs). It is submitted, therefore, that the reasonable anticipation of the defendant should not measure the damage arising from his actionable negligence. 9 Harv. Law Rev. 80.

In a recent case a Pullman porter stole from a stateroom a bag containing medicines. As a result, the plaintiff, a woman in delicate health, and dependent on the medicines, collapsed physically. The court held the Pullman Company liable in negligence for its servant's acts, and repudiating the test of reasonable anticipation, gave damages for plaintiff's physical injury and mental suffering. *Bacon* v. *Pullman Co.* (1908) 159 Fed. 1. In conceiving an action for injury inflicted by the wilful act of the company's servant as an action for negligence, the court erred; 8 COLUMBIA LAW REVIEW 326; but assuming the case to be properly such, sound principles were applied. The delicate health of the plaintiff is not an intervening cause, *Crane Elevator Co.* v. *Lippert* (1894) 63 Fed. 942; note, 10 Am. State Rep. 64, and her mental suffering may be taken into account, *Homans* v. *Boston etc. Ry. Co.* (1902) 180 Mass. 456, if connected with bodily injury, Joyce, Damages § 220, and not caused merely by contemplation or worry over the possible results of the injury. *Maynard* v. *Oregon R. R. Co.* (1904) 46 Ore. 15. In jurisdictions where the cause of action consists of the wrongful act, and the injury to the person and property are regarded merely as different items of damage, Burdick, Torts, 213, the result in the principal case is to be supported. Where, however, personal rights are recognized as distinct from property rights, *Brunsden* v. *Humphrey* (1884) 14 Q.B.D. 141; *Reilly* v. *Sicilian Asphalt Co.* (1902) 170 N. Y. 40, and the act of the porter would support two actions, the rule of direct causal sequence in measuring damage would be limited. In an action for injury to property, no damages could be allowed for injury to the person, and *vice versa.* In the principal case, therefore, damages for physical collapse and mental suffering would be recoverable only if sufficient in themselves to support an action.

STATUTES OF REPOSE AND THE "DUE PROCESS" CLAUSE.—Statutes of Limitation, properly so called, are strongly favored by the courts, and their constitutionality unquestioned if a reasonable time is allowed for suit. See *Terry* v. *Anderson* (1877) 95 U. S. 628. They are commonly viewed as protective measures of a personal nature; the theory is that one who makes an adverse claim shall have the dispute settled before the facts are obscured or the evidence lost. *Riddlesbarger* v. *Hartford Ins. Co.* (1868) 7 Wall. 386. From a practical standpoint, the convenience of the courts may appear a further consideration; yet, theoretically, it is of little importance, since the statute may be waived. It is also said that failure to bring an action within a reasonable time raises a presumption against its original validity, *Battle* v. *Shivers* (1869) 39 Ga. 405, or that the right has been abandoned. *Gilfillan* v. *Union Canal Co.* (1883) 109 U. S. 401. A Statute of Limitations cannot, however, operate *ex proprio vigore* to transfer the ownership of property. Although in Massachusetts a statute has been

recently held constitutional providing for the distribution of property of an absentee after a certain period of time, thereby permanently divesting him of all rights therein, *Nelson* v. *Blinn* (Mass. 1908) 83 N. E. 889, the decision seems clearly wrong. Lapse of time does not of itself raise a conclusive presumption of abandonment of property, and transfer of property by a limitation of the remedy without adverse possession is unknown to our system of law. 8 COLUMBIA LAW REVIEW 501. Similarly, an equitable title may only be divested by the operation of a bar to the remedy after a repudiation of the trust and the assertion of entire ownership in the property, which not only must be open, but must be brought to the knowledge of the *cestui que trust.* Wood, Limitations (3rd Ed.) 464. Until that time, the possession of the trustee is deemed that of the *cestui. Hovendon* v. *Annesley* (1805) Sch. & Lef. 607.

Upon the theories of orthodox Statutes of Limitation and adverse possession, an Act of Congress of 1897, requiring money deposited in court, if unclaimed for ten years or longer, to be placed in a designated depository to the credit of the United States, is hardly justifiable as a constitutional measure. Such was the decision in a recent case. *American Loan & Trust Co.* v. *Grand Rivers Co.* (1908) 159 Fed. 775. As a statute of repose, it has none of the characteristics of a Statute of Limitation. Property *in custodia legis* is, at best, held by the court in trust for the claimant, and the trust would seem to be express within the meaning of the Statutes of Limitation. Cf. *United States* v. *Taylor* (1881) 104 U. S. 216; *New Orleans* v. *Fisher* (1899) 91 Fed. 574. Hence, no Statute of Limitation would properly begin to run before a breach of the trust. Of the considerations underlying Statutes of Limitation, *supra,* only the convenience of the courts is applicable; manifestly, obscuration of facts or loss of evidence can be no foundation for such a statute, nor a presumption against the original validity of the claim. Even assuming that a conclusive presumption of abandonment may be established by legislation, the period allowed can scarcely be considered reasonable. Cf. *Samson* v. *Samson* (1870) 39 L. J. Ch. 582. The Statute seems clearly improper in attempting to transfer the property of the claimant. In the most favorable aspect, the possession of the court may be considered that of the government; but even so, there is no adverse possession or claim. If the court be viewed as a *persona* distinct from the government, the latter is a total stranger to the fund, lacking even a trustee's possession.

Although novel and extreme statutes of repose, affecting individuals alone, have been held constitutional within the impairment of contract clause, *Gilfillan* v. *Union Canal Co., supra,* due apparently to the exigencies of the case, legislation virtually appropriating private property to the state should be more closely scrutinized under the "due process" clause to determine whether it conforms to the notions of justice established in the law with regard to the particular situation. Cooley, Const. Lim. (7th Ed.) 505, 506. From this standpoint, there is little basis for the validity of the Statute in question, in view both of the practice of England prior to the adoption of the Constitution and of the American precedents. All English legislation dealing with the suitor's fund in Chancery, while providing for the investment thereof, invariably preserved to suitors the right to have their claims satisfied whenever they might be presented. 12 Geo. II, c. 24

(1739); 4 Geo. III, c. 32 (1764); 5 Geo. III, c. 28 (1765); 9 Geo. III, c. 19 (1769); 14 Geo. III, c. 43 (1774). In New York, a law providing that court deposits unclaimed for twenty years should be paid to the State Treasurer, was held constitutional, *People* v. *Keenan* (1905) 110 App. Div. 537, since the claimants might still obtain their money on a court order. Laws of 1892, c. 651. A similar provision in §§ 661-664 of the Tennessee Code of Procedure was held valid for the same reason. *Deadrick* v. *County Court* (Tenn. 1860) 1 Coldw. 202. The only statute similar to the Federal Statute, which can be found is in Massachusetts, the constitutionality of which has not been passed upon. It would appear, therefore, that the claimant to money in court should have a durable right not to be impaired by any limitation of time. Moreover, the "due process" clause requires, in general, some form of procedure appropriate to the case, with proper notice to the person whose property is to be taken, so that he may assert his rights. *Davidson* v. *New Orleans* (1877) 96 U. S. 102. No such procedure has been provided by Congress. While the idea of repose and the convenience of the courts may be of sufficient strength to justify a statute of a more moderate character with proper procedure, the act in question seems unquestionably invalid.